Supreme Court, U.S.
FILED
DEC 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1772

In the Supreme Court of the United States

October Term 1986

THE STATE OF UTAH, by and through its DIVISION OF STATE LANDS,
Petitioner,

v.

UNITED STATES OF AMERICA; DONALD P. HODEL, Secretary of the Interior; ROBERT F. BURFORD, Director of the Bureau of Land Management within the Department of the Interior; and ROLAND G. ROBISON, JR., Utah State Director of the Bureau of Land Management,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

DAVID L. WILKINSON
Utah Attorney General
DALLIN W. JENSEN*
Solicitor General
MICHAEL M. QUEALY
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WASHINGTON DC 20530
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Counsel for Respondents

*Counsel of Record

PETITION FOR CERTIORARI FILED APRIL 24, 1986
CERTIORARI GRANTED OCTOBER 14, 1986

INDEX

Page

Chronological List of Relevant Docket Entries 1

Plaintiff's First Amended Complaint, filed May 7, 1980 4

Defendants' Answer to First Amended Complaint, filed May 28, 1980 8

Pre-Trial Order, filed August 27, 1980 10

Defendants' Motion for Summary Judgment, filed March 8, 1982 18

Exhibits to Motion:

A. Letter dated April 6, 1889, from J. W. Powell, Director, U.S.G.S. 19

B. Letter dated Aprl 11, 1889, from S. M. Stockslager, Commissioner of General Land Office 21

C. Letter dated April 13, 1889, from John W. Noble, Secretary of the Interior 22

D. Excerpts from Tenth Annual Report of the United States Geological Survey, 1890 23

E. Excerpts from Eleventh Annual Report of the United States Geological Survey, 1891 .. 27

Plaintiff's Cross-Motion for Summary Judgment, filed April 21, 1982 (without attachments) 39

Memorandum Opinion and Order of District Court, filed April 15, 1983 ..... Pet. App. 28a*

Page

Notice of Appeal, filed June 9, 1983 40

Opinion of Tenth Circuit Court of Appeals, filed December 26, 1985 ..... Pet. App. 1a*

Judgment of Tenth Circuit Court of Appeals, filed December 26, 1985 41

Order Granting Writ of Certiorari, filed October 14, 1986 43

*Omitted in the printing of this Joint Appendix because they appear in the printed Petition for Certiorari.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	*Description*
05/22/79	Complaint of Plaintiff State of Utah filed. Summons issued. Case assigned to Judge Jenkins.
08/29/79	Answer filed.
01/31/80	Request for Admission and Notice of Intent to Request Sanctions.
01/31/80	Interrogatories to Defendant United States of America.
01/31/80	Request for Production of Documents.
04/02/80	Defendants' Response to Plaintiff's Request for Admission and Notice of Intent to Request Sanctions.
04/02/80	Defendants' Response to Request for Production of Documents.
04/02/80	Defendants' Answer to Interrogatories.
04/29/80	Plaintiff's Motion for Order allowing it to file First Amended Complaint
05/07/80	Order allowing Plaintiff to file First Amended Complaint signed by Judge Jenkins 05/02/80.
05/07/80	First Amended Complaint.
05/19/80	Plaintiff's Second Set of Interrogatories.
05/28/80	Answer filed.
06/16/80	Answers to Plaintiff's Second Set of Interrogatories.
06/20/80	Plaintiff's Third Set of Interrogatories.
07/03/80	Plaintiff's Admissions of Fact and Genuineness of Documents.

Date	*Description*
07/03/80	Answers to Defendants' First Set of Interrogatories.
07/22/80	Answers to Plaintiff's Third Set of Interrogatories.
08/01/80	Motion by Plaintiff to Compel Answers to Interrogatories.
08/14/80	Supplementary Answers to Plaintiff's Second Set of Interrogatories.
08/22/80	Came before the Court for Pretrial. Pretrial Order presented to the Court. Trial set for 02/10/81 at 9:30 a.m.
08/22/80	Supplementary Answers to Plaintiff's Third Set of Interrogatories.
08/27/80	Pretrial Order signed by Judge Jenkins 08/25/80.
02/03/81	Joint Motion for Continuance of Trial.
02/03/81	Order signed by Judge Jenkins 02/03/81 resetting Trial to 06/18/81 at 9:30 a.m.
05/21/81	Came before the Court for Status Report. Counsel advised the Court of settlement negotiations. The Court vacated Trial setting of 06/18/81 at 9:30 a.m. and set it down for Status Report on 08/28/81 at 1:30 p.m.
08/28/81	Came before the Court for Status Report, Scheduling Conference and all pending Motions. Parties still negotiating settlement.
03/08/82	Defendants' Motion for Summary Judgment, Supporting Memorandum, and Exhibits 1, 2 & 3.

Date	*Description*
04/21/82	Plaintiff's Cross Motion for Summary Judgment and Supporting Memorandum.
04/27/82	Plaintiff's Errata: Memorandum in Support of Utah's Cross Motion for Summary Judgment.
05/07/82	Original Affidavits in Support of Plaintiff's Cross Motion for Summary Judgment; Supplemental Affidavit of Michael M. Quealy; attachments entitled: Report on Provo Bay Unit, 12/23/26; Report on Utah Lake Reclamation, July 1925; and Dept. of Interior U.S. Reclamation Service Report on Utah Lake Division, May 1923.
05/28/82	Amended Notice of Hearing on Motions for Summary Judgment reset for 06/10/82 at 2:00 p.m.
06/02/82	Defendants' Memorandum in Opposition to Cross Motion for Summary Judgment and Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment.
06/10/82	Came before the Court for Hearing on Motions for Summary Judgment. Matter taken under advisement.
04/15/83	Memorandum Opinion & Order signed by Judge Jenkins 04/15/83 denying Plaintiff's Cross Motion for Summary Judgment and granting Defendants' Motion for Summary Judgment.
06/09/83	Notice of Appeal filed by Plaintiff.
12/26/85	Opinion of Tenth Circuit Court of Appeals.
12/26/85	Judgment of Tenth Circuit Court of Appeals.
10/14/86	Order granting Writ of Certiorari.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

— CENTRAL DIVISION —

Civil No. C-79-0302

THE STATE OF UTAH, by and through its Division of State Lands,

Plaintiff,

v.

UNITED STATES OF AMERICA; CECIL D. ANDRUS, Secretary of the United States Department of the Interior; FRANK GREGG, Director of the Bureau of Land Management within the Department of the Interior; and GARY WICKS, Utah State Director of the Bureau of Land Management,

Defendants.

FIRST AMENDED COMPLAINT

Filed May 7, 1980

Plaintiff alleges that:

COUNT ONE

1. Plaintiff is the State of Utah and brings this action for a declaratory judgment by and through the Division of State Lands; Defendant Cecil D. Andrus is the Secretary of the United States Department of the Interior; Defendant Frank Gregg is the Director of the Bureau of Land Management within the Department of the Interior; and Defendant Gary Wicks is the Utah State Director of the Bureau of Land Management.

2. Jurisdiction of this Court is invoked under 28 U.S.C. 1331 (federal question); venue is properly laid under 28 U.S.C. 1391; the Defendants are subject to suit under 5 U.S.C. 701 *et seq.* (the Administrative Procedures Act); the relief sought is available under 28 U.S.C. 2201 *et seq.* (Declaratory Judgment Act) and 28 U.S.C. 1361 (Mandamus); and the amount in controversy exclusive of interest, attorneys' fees and costs, exceeds $10,000.00.

3. Plaintiff has the statutory responsibility under the laws of the State of Utah to manage and administer all lands owned by the State of Utah, including the beds of navigable waters.

4. Utah Lake is a body of water located wholly within the State of Utah, which was navigable on January 4, 1896, when the State of Utah was admitted into the Union of the United States of America; it has at all times since been navigable, and it now is a navigable body of water. At the date of statehood, by virtue of its admission into the Union on an equal footing with all other States, the State of Utah became the owner in a sovereign and proprietary capacity of the beds of all navigable lakes and streams located within the State of Utah. Therefore, at the date of statehood, by virtue of its admission into the Union on an equal footing with all other States, the State of Utah became the owner, has ever since been the owner, and now is the owner of the bed of Utah Lake and the Natural resources associated therewith or located therein.

5. In recent years Defendants have begun to assert, and are now asserting, unfounded and unlawful claims

to the bed of Utah Lake contrary to the title and ownership of the State of Utah, and have caused oil and gas leases to be issued to third parties covering part of the bed of Utah Lake, and have failed and refused to recognize Utah's rightful title to the bed of said Lake. The Court should enjoin Defendants from interfering with Utah's ownership and management of the bed of Utah Lake. Plaintiff has no adequate remedy at law, has no administrative remedies to exhaust, and will suffer irreparable harm if the relief requested is not granted.

6. The bed of Utah Lake consists of the area located within the ordinary high water level of the Lake, but Utah does not ask the Court to make any determination with respect to the boundary of the Lake. The sole conflict presented by this action is between Utah and the United States. Any rights and claims of third parties to the Lake or areas adjacent to the Lake shall not be affected by the relief sought in this Complaint.

COUNT II

7. Plaintiff realleges Paragraphs 1 through 6 of COUNT I as part of COUNT II.

8. As an alternative to COUNT I, Plaintiff alleges that if for any reason it did not obtain title to the bed of Utah Lake at the date of statehood, then and in that event it obtained full and complete title thereto, including all natural resources in such bed and in the waters of such Lake, on or about May 22, 1953, by virtue of the Submerged Lands Act, 43 U.S.C. §1301, *et seq.*, and particularly Section 1311(a).

WHEREFORE, Plaintiff prays:

1. That this Court adjudicate and declare that the

State of Utah is the owner of the bed of Utah Lake and the natural resources associated therewith or located therein; that the recent actions of Defendants are unlawful in asserting claims of dominion and control over, and claims of ownership to, the bed of Utah Lake; and that any rights and claims of third parties to the Lake or areas adjacent to the Lake shall not be affected by any such adjudication.

2. That this Court issue an order enjoining Defendants from interfering with Utah's ownership and management of the bed of Utah Lake and the natural resources associated therewith or located therein.

3. For such other relief as shall appear to be appropriate.

DATED this 28th day of April, 1980.

/s/ Robert B. Hansen
ROBERT B. HANSEN
Utah Attorney General

/s/ Richard L. Dewsnup
RICHARD L. DEWSNUP
Assistant Attorney General

/s/ Dallin W. Jensen
DALLIN W. JENSEN
Assistant Attorney General

/s/ Michael M. Quealy
MICHAEL M. QUEALY
Assistant Attorney General

Plaintiff's Address:
411 Empire Building
231 East Fourth South
Salt Lake City, UT 84111

301 Empire Building
231 East Fourth South
Salt Lake City, UT 84111

(Certificate Of Service Omitted In Printing)

DEFENDANTS' ANSWER
Filed May 28, 1980

(Title Omitted In Printing)

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction.

THIRD DEFENSE

This action is barred by the Statute of Limitations as provided under the Federal Quiet Title Act, 28 U.S.C. 2409a.

FOURTH DEFENSE

Any claim plaintiff may have is barred by laches.

The defendants now answer the numbered paragraphs of plaintiff's Amended Complaint as follows:

1. Admit.

2. Deny.

3. Admit that Plaintiff administers all lands owned by the State of Utah, but deny the remainder of the allegation.

4. First sentence, admit. Defendants deny all remaining allegations of this paragraph.

5. First sentence, aver that the United States owns the bed of Utah Lake and admit that defendants have issued oil and gas leases covering part of the bed of Utah Lake.

Second sentence, deny.

6. Admit.

7. Defendant has previously responded to paragraphs one through six and incorporates those responses.

8. Deny.

WHEREAS, the defendants having answered fully the allegations request that this action be dismissed and that the Court grant any other relief as may be fit and proper.

DATED this 28th day of May, 1980.

RONALD L. RENCHER
United States Attorney

/s/ Wallace Boyack
WALLACE BOYACK
Assistant United States Attorney
Attorney for Defendant United States
of America

(Certificate Of Service Omitted In Printing)

PRE-TRIAL ORDER
Filed August 27, 1980
(Title Omitted In Printing)

This matter having come before the Court on Friday, August 22, 1980, at 1:30 p.m. at a pre-trial conference held before the Honorable Bruce S. Jenkins, pursuant to Rule 16 of the Federal Rules of Civil Procedure, 38 U.S.C.; and Richard L. Dewsnup, Dallin W. Jensen and Michael M. Quealy having appeared as counsel for Plaintiff and Wallace Boyack having appeared as counsel for Defendants, the following action was taken:

1. *JURISDICTION*: Plaintiff claims that this is an action for declaratory judgment and invokes jurisdiction of the Court under 28 U.S.C. Section 1331 because the Court must construe and interpret the meaning and legal effect of the subject reservoir site segregation, and must further determine and adjudicate the applicability and effect of the Equal Footing Doctrine with respect to Utah Lake and Utah's sovereign and proprietary rights in said Lake, and must further interpret Utah's proprietary and sovereign rights under the Utah Enabling Act, 28 Stat. 107, *et seq*. As an alternative and conditional Count, to be relied on only if the Court concludes that a declaratory judgment is improper in this case, then and in that event Plaintiff seeks an adjudication under the Federal Quiet Title Act, 28 U.S.C. Section 2409a, that Utah owns the bed of Utah Lake.

Defendants claim that this Court does not have jurisdiction based on 28 U.S.C. Section 1331 as there is no federal question involved because the effect of the withdrawal is basically a factual question. Further, any legal

challenge regarding the effect of the withdrawal on the title to the bed of Utah Lake must be brought under the Quiet Title Act, 28 U.S.C. Section 2409a, by the party disputing the title of the United States. Furthermore, Defendants claim that any action brought under the Quiet Title Act by the Plaintiff is barred by the Statute of Limitations.

VENUE. Venue is laid by Plaintiff in the Central Division of the District of Utah, the statutory basis for the claim of venue being 28 U.S.C. Section 1391. Such venue was determined by the Court to be proper.

2. *GENERAL NATURE OF THE CLAIMS OF THE PARTIES.*

A. Plaintiff claims that it owns title to the bed of Utah Lake by virtue of the navigability of the Lake at statehood, and, as an alternative claim, that it obtained title on or about May 22, 1953, by virtue of the Submerged Lands Act, 43 U.S.C. Section 1301 *et seq*., and particularly Section 1311a.

B. Defendants claim that title to the bed of Utah Lake has remained in federal ownership by virtue of the selection and reservation of Utah Lake as a reservoir site on April 6, 1889, by J. W. Powell, and notice thereof was sent by letter dated April 11, 1889, from S. M. Stockslager, Commissioner of the General Land Office, to the Register and Receiver in Salt Lake City, and acknowledgment of receipt of notice of Utah Lake as a reservoir site was given by a letter dated April 13, 1889, from John W. Noble, Secretary of the Interior to J. W. Powell, Director of the United States Geological Survey.

Defendants further claim, as a procedural and jurisdictional matter, that the claims of Plaintiff are barred by the Statute of Limitations provided under the Federal Quiet Title Act, 28 U.S.C. Section 2409a; and that the claims of Plaintiff are further barred by laches.

Defendants claim that the State received no title to the lands in question by virtue of the Submerged Lands Act, 43 U.S.C. Section 1301 *et seq.*

C. All other parties' claims: No other person or entity has any known claim to the water-covered bed of Utah Lake. Private upland owners may have claims to exposed lands located between the surveyed meander line and the actual water level of the Lake, but there will be no adjudication in this action with respect to any such private claims to the exposed lands.

3. *UNCONTROVERTED FACTS.* The following facts are established by admissions in the pleadings or by stipulations of counsel:

A. The Court has jurisdiction of the parties and subject matter of this action, subject to Defendants' claims that there is no federal question and that this action is barred by the Statute of Limitations set forth in 28 U.S.C. Section 2409a.

B. On January 4, 1896 (the date of Utah's statehood) Utah Lake was "navigable-in-fact" under federal law and was susceptible of being used, in its ordinary condition, as a highway of commerce over which trade and travel may have been conducted in the customary modes of trade and travel on water, all within the meaning of *The Daniel Ball,* 10 Wall. 557, 563 (1870), as interpreted and applied in *United States v. Holt State Bank,* 270 U.S. 49 (1926); *United States v. Utah,* 283 U.S. 64 (1931); and *Utah v. United States,* 406 U.S. 484 (1972).

4. *CONTESTED ISSUES OF FACT.* The basic contested issues of fact remaining for determination relate generally (a) to the time when Plaintiff had legal notice of the selection of Utah Lake as a reservoir site and the claim by the United States that such selection was sufficient to prevent Utah from receiving title at the date of statehood in 1896 or at the date of enactment of the Submerged Lands Act in 1953, as such facts may relate to the Statute of Limitations issue; and (b) to such circumstances and events as are relevant to the issue of laches; and (c) to the respective claims of the parties to occupancy, possession, use, management, administration and control over Utah Lake from January 4, 1896, to the present time.

Defendants claim that the Contested Issues of Fact remaining for determination by the Court are as follows:

A. Whether the bed of Utah Lake was withdrawn by the United States in 1889 prior to Utah becoming a state.

B. Whether the withdrawal in favor of the United States had the effect of vesting all interest in the lands covered by the waters of Utah Lake in the United States or whether the United States has an interest in said lands only for reclamation purposes.

C. At what time did the State of Utah become aware of the interest and claim of the United States to the bed of Utah Lake?

D. Did the statehood of Utah in 1896 affect the withdrawal of the bed of Utah Lake by the United States?

5. *BASIC CONTESTED ISSUES OF LAW.*

A. Do the issues presented to the Court involve a federal question which would provide the Court with jurisdiction under 28 U.S.C. Section 1331?

B. Is a claim barred by the Quiet Title Act, 28 U.S.C. Section 2409a, even though the claim arose and the twelve-year Statute of Limitations ran prior to the enactment of the Quiet Title Act?

C. Does the withdrawal for reservoir site purposes bar a state from receiving upon statehood lands previously withdrawn by the United States that it would otherwise receive based on the Equal Footing Doctrine?

D. Did the Submerged Lands Act, 43 U.S.C. Section 1301 *et seq.*, and particularly Section 1311a, grant any interest in the bed of Utah Lake to Plaintiff, State of Utah?

E. Other issues of law, subordinate and relevant to the broad issues of law set forth above, may be raised and argued by the parties.

6. *EXHIBITS.* Plaintiff offers none at this time. If exhibits are to be offered and their necessity reasonably can be anticipated, they will be submitted to opposing counsel at least fifteen days prior to trial.

Defendants intend to offer copies of the following documents which the Plaintiff has previously admitted are genuine.

A. Selection dated April 6, 1889, by J. W. Powell.

B. Notice to the Register and Receiver in Salt Lake City, Territory of Utah by Commissioner S. M. Stockslager dated April 11, 1889.

C. Letter dated April 13, 1889, from John W. Noble, United States Secretary of the Interior, to the Director of the Geological Survey.

D. The Eleventh Annual Report of the United States Geological Survey to the Secretary of the Interior, 1889-1890. Cover page and pages 183-189.

E. Letter dated January 15, 1963, from the Governor of the State of Utah, the Honorable George D. Clyde, to Stewart L. Udall, Secretary of Interior.

F. Letter dated January 13, 1963, from the Governor of the State of Utah, to U.S. Senator Frank E. Moss.

G. Letter dated February 21, 1963, from Stewart L. Udall, Secretary of the Interior, to the Governor of the State of Utah.

H. Letter dated August 15, 1963, from Stewart L. Udall, Secretary of the Interior, to the Governor of the State of Utah.

I. Memorandum Opinion dated January 26, 1965, by the Regional Solicitor, Department of the Interior.

7. *WITNESSES.*

A. In the absence of notice of at least five days to opposing counsel to the contrary, Plaintiff will call as witnesses:

Donald G. Prince, Assistant Director
Division of State Lands

Douglas F. Day, Director
Division of Wildlife Resources
Ross B. Elliott, Director
Division of Parks & Recreation

Plaintiff may call:

David Crandall
John Jensen
Palmer DeLong
(All of whom are retired employees of the U.S. Bureau of Reclamation, now known as Water and Power Resources Service)

Plaintiff will use no depositions.

B. In the absence of at least five days notice to opposing counsel to the contrary, Defendants may call:

Nelson W. Plummer
Howard Pearson
Rex Gabbitas
Michael Nelson
Ed Cox

Defendants will use no depositions.

C. In the event that other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least five days prior to trial. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony reasonably cannot be anticipated before the time of trial.

8. *REQUESTS FOR INSTRUCTIONS.* There will be no instructions since this is a non-jury trial.

9. *AMENDMENTS TO PLEADINGS.* To the

extent that this Pre-Trial Order has supplemented the pleadings, such pleadings are amended by and merged with this Pre-Trial Order.

10. *DISCOVERY.* Discovery has been completed.

11. *TRIAL SETTING.* The case is set for trial without a jury on February 10, 1981 at 9:30 o'clock a.m. Estimated length of trial is two days.

12. *POSSIBILITY OF SETTLEMENT.* None.

DATED this 25th day of August, 1980.

/s/ Bruce S. Jenkins
BRUCE S. JENKINS, Judge
August 28, 1980 United States District Court

Copies mailed to counsel:
Richard L. Dewsnup, Esq.
Wallace Boyack, Esq.

The foregoing proposed Pre-Trial Order [prior to execution by the Court] is hereby adopted this 22nd day of August, 1980.

/s/ Richard L. Dewsnup
RICHARD L. DEWSNUP
Assistant Attorney General
/s/ Dallin W. Jensen
DALLIN W. JENSEN
Assistant Attorney General
/s/ Michael M. Quealy
MICHAEL M. QUEALY
Assistant Attorney General
ATTORNEYS FOR PLAINTIFF
/s/ Wallace Boyack
WALLACE BOYACK
Assistant United States Attorney
ATTORNEY FOR DEFENDANTS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Filed March 8, 1982

(Title Omitted In Printing)

Come now the defendants and move the court pursuant to Rule 56 of the Federal Rules of Civil Procedure to enter summary judgment in their favor. Summary judgment is appropriate in this case because there are no genuine issues as to any material fact and the defendants are entitled to judgment as a matter of law. Defendants' motion is based on the pleadings, discovery, affidavit of Darrell C. Barnes and exhibits thereto, and the memorandum in support of defendants' motion filed herewith, and the exhibits attached thereto.

DATED this 5th day of March, 1982.

/s/ Brent D. Ward
BRENT D. WARD
United States Attorney

/s/ Steven A. Herman
STEVEN A. HERMAN
LAWRENCE W. PUCKETT
Attorneys, Department of Justice

EXHIBIT A

April 6, 1889

Sir:

In conformity with the act approved October 2, 1888, making appropriation for the Sundry Civil expenses of the Government and of the clause thereof which appropriates:

"For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation, and the segregation of the irrigable lands in such arid regions and for the selection of sites for reservoirs and other hydraulic works for the storage of water for irrigation, etc."

And which farther provides that,

"All the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches or canals for irrigation purposes and all the lands made susceptible of irrigation by such reservoirs, ditches or canals are from this time hence forth hereby reserved from sale as the property of the United States and shall not be subject after the passage of this act to entry, settlement or occupation until further provided by law."

I have the honor to report that the site of Utah Lake in Utah County in the Territory of Utah is hereby selected as a reservoir site, together with all lands situate within two statute miles of the border of said lake at high water.

Pending the more accurate designation of the boundaries of the foregoing site by township, section and quarter-section lines, I respectfully recommend that the Register of the Land Office at Salt Lake City be instructed to refuse further entries of public land within the foregoing prescribed limits.

I venture to add that speedy action should be taken in this matter as any further entries of the lands adjoining Utah Lake will have a tendency to defeat the purposes of the law and obstruct the use of the lake as a natural reservoir for the irrigation of lands below its outlet.

An officer of this survey is now on the grounds making the necessary examination and surveys whereby the boundaries of the site may be designate in land office terms.

I am, with respect,
your obedient servant,

/s/ J. W. Powell, Director

4-7 pp 195-198

EXHIBIT B

"C" (Also see "C"
Nov. 4, 1891)

DEPARTMENT OF THE INTERIOR
General Land Office
Washington, D.C.

April 11, 1889

Register and Receiver,
Salt Lake City, Utah Ty.
Gentlemen:

A report has been made to the Hon. Secretary of the Interior by Director Powell of the Geological Survey under date of the 6th instant, stating "That the site of Utah Lake in Utah County, in the Territory of Utah, is hereby selected as a reservoir site, together with all lands situated within two statute miles of the border of said lake at high water."

The said report has been referred to this office by Assistant Secretary Bossey, with directions under date of the 11th instant that you be instructed to refuse further entries or filing on the lands designated, in accordance with the Act of October 2, 1888, pamphlet statutes, page 527.

You are therefore so instructed, that no entries or filing may be permitted to conflict with said selection, of which the intention is expressed to furnish as soon as practicable, a more accurate description, by legal subdivisions.

Respectfully,

/s/ S. M. Stockslager
Commissioner

EXHIBIT C

DEPARTMENT OF THE INTERIOR
Washington

April 13, 1889

The Director of the Geological Survey

Sir:

Your letter of the 6th instant, informing the Department that Utah Lake has been selected as a reservoir site in connection with the irrigation of the arid lands, and as provided for in the Sundry Civil Act of October 2, 1888, has been received. In accordance with your request that speedy action be taken in instructing the Register and Receiver at Salt Lake City to refuse further entries of lands in the limits designated, your communication was yesterday referred to the Commissioner of the General Land Office with directions to take the desired action in the premises.

Very respectfully,

/s/ John W. Noble
Secretary

3065-'89

EXHIBIT D

DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY

THIS IS
GOVERNMENT PROPERTY

DO NOT REMOVE
FROM THE SURVEY OFFICE

TENTH ANNUAL REPORT
OF THE
UNITED STATES GEOLOGICAL SURVEY
TO THE
SECRETARY OF THE INTERIOR
1888-'89

BY
J. W. POWELL
DIRECTOR

PART II — IRRIGATION
WASHINGTON

GOVERNMENT PRINTING OFFICE
1890

22	Six-mile Creek Reservoir	Fremont	Six-mile Creek, Arkansas River		7	Reservoirs 22 and 23.
23	Eight-mile Creek Reservoir	do	Eight-mile Creek, Arkansas River			
24	Upper Clear Creek Reservoir	Chaffee	Clear Creek, Arkansas River		5	
25	Cottonwood Lake Reservoir	do	Little Cottonwood River		4	
	Total				185¼	

UTAH.

1	Utah Lake	Utah	Jordan River, Salt Lake			All lands situate within 2 statute miles of lake at high water.
2	Gunnison Reservoir	San Pete	San Pitch River		5	Do.
3	Bear Lake Reservoir	Rich Bear Lake†	Bear River, Salt Lake		(‡)	
4	Deseret Reservoir	Millard	Sevier River		6	
5	Cottonwood Creek Reservoir	Salt Lake	Cottonwood Creek		14	
6	Panquitch Hayfield, Upper Reservoir	Garfield	East Fork, Sevier River		8	
7	Plateau Valley Reservoir	do	do		5	
8	Panquitch Lake Reservoir	Iron	West Fork, Sevier River		14	
9	Marysvale Reservoir	Pi Ute	Sevier River		11	
10	Otter Creek Reservoir	do	East Fork, Sevier River		12	
	Total				§75	

NEW MEXICO.

1	Lake Constance Reservoir	Dona Ana	Rio Grande		252	Seven townships.—All public lands on the right bank of the Rio Grande between the Mexican boundary and a point 20 miles above that boundary line and extending 4 miles west of said right bank, reserved from entry and sale.
2	San Ildefonso, No. 1, upper site	Bernalillo	do	150,000		In San Ildefonso and Santa Clara Pueblo Grants.
3	San Ildefonso No. 2	do	do			
4	San Felipe Reservoir	do	do	125,000		Nearly all in San Felipe and Santo Domingo land grants.
5	San Marcial	Sierra	do	360,000	56	85 miles below San Marcial.
6	(Rio Grande)	do	do	140,000	80	On Rio Grande between Rio Palomas and Rio Pirches.
7	Hot Springs (military reservation)	Socorro	Alamosa Creek	35,000	6	Covers good portion of Hot Springs military reservation.
8	Small reservoir, T.7S.,R.7W	do	do		4	
9	Small reservoir, T.2N.,R.4W	do	do		4	
10	Small reservoir, T.6N.,R.7W	Valencia	Rio Colorado, San Jose River		8	

*Exclusive of Clear Lake †Bear Lake County, Idaho. ‡860 approximately. §Exclusive of Utah and Bear Lakes.

difficulty was experienced in finding suitable cross-sections owing to the torrential character of the streams and to many obstructions presented by dams and other obstacles caused by the use of these rivers for floating logs, lumber, fire-wood and railroad ties. The season also was unfavorable. An exceptional storm in May caused the river to rise prematurely and before that event was expected and before the stations had been fully established. With the exception of this storm the season was almost unprecedently dry and after it was over the river quickly fell, so that in some of them the record of river heights became unsatisfactory because there was so little water to measure. Stations, however, were established at Essex, Nev., and a record kept by which the daily mean discharge has been calculated from May 21. The flows of the tributaries were also gauged repeatedly in Prosser, Juniper, Grey, Bronco Martis, Squaw, Coldstream, and Dog Creeks, and on the Little Truckee. The Carson River was examined and gauging begun in June near Genoa, and on the west fork of the Carson below Hope Valley.

HYDROGRAPHIC WORK IN UTAH.

In April Mr. Newell was sent to Utah to make certain examinations of Utah Lake with reference to its capacity for a reservoir site and to furnish the specifications for its withdrawal as such under the law, so far as the lands covered or overflowed by it or the lands bordering upon it were still public lands. Having completed this work it became evident that his services for hydrographic investigation were so urgently demanded and so greatly needed

that it seemed as if no more useful station could be selected. He was therefore instructed to begin the gauging of the principal streams and to carry on systematic hydrographic work in those portions of the territory which were readily accessible. Beginning with the Bear River, a station was located at the lower end of the canyon where it enters Malade Valley, and one has since been placed above Cache Valley at Battle Creek. At all of the principal streams which flow from the Wasatch into the Salt Lake basin observations and gaugings have been begun, including Provo River, American and Spanish Forks. Stations were established and gauged in the fertile Sevier Valley at Joseph City and at Leamington. An evaporation station has also been well maintained at Fort Douglas. Mr. Newell has also collected a large amount of statistical information concerning the water-supply, canals and irrigation of Utah, and accomplished the segregation of the irrigable lands in Bear River valley.

SNAKE RIVER.

Mr. J. B. Williams was assigned to the hydrographic work in Idaho, with Mr. L. D. Hopson as an assistant. Prior to this assignment he had been sent to El Paso to establish the important station there, and

EXHIBIT E

DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY

THIS IS
GOVERNMENT PROPERTY

DO NOT REMOVE
FROM THE SURVEY OFFICE

ELEVENTH ANNUAL REPORT
OF THE
UNITED STATES GEOLOGICAL SURVEY
TO THE
SECRETARY OF THE INTERIOR
1889-'90

BY
J. W. POWELL
DIRECTOR

PART II—IRRIGATION

WASHINGTON

GOVERNMENT PRINTING OFFICE
1891

		Acres.	Acres.
Section 35	SW. ¼ of the NW. ¼	40	
	W. ½ of the SW. ¼	80	
			120
	T. 11 N., R. 20 E., Mount Diablo meridian.		
Section 2	W. ½ of the NW. ¼	80.20	
Section 3	All of the NE. ¼	159.74	
	All of the SE. ¼	160	
	All of the NW. ¼	158.58	
	All of the SE. ¼	160	
			638.32
Section 4	NE. ¼ of the NE. ¼	39.15	
	S. ½ of the NE. ¼	80	
	All of the SE. ¼	160	
			279.15
Section 9	All of the NE. ¼	160	
Section 10	All of the NE. ¼	160	
	NW. ¼ of the SE. ¼	40	
	N. ½ of the NW. ¼	80	
	SE. ¼ of the NW. ¼	40	
			320
Total area segregated			1,797.67

UTAH.

In Utah, in addition to the general reconnaissance of the storage facilities at the headwaters of the Sevier River and other streams, a careful survey was made of Utah Lake. This survey, run by level and transit around the lake, was for the purpose of determining the area which would be covered by damming or holding back

the flood water. A description of the location and physical features of this body of water is to be found in this report under the head of Hydrography, and it will suffice to state here that after a careful study it was found that, on account of the excessive evaporation from such an enormous surface, the lake was too large to act in an economical manner as a storage reservoir. On the other hand, while it may not be advisable to hold back the water to a point above that of the average height, yet there is sufficient evidence to show that natural forces at times may raise the water level and increase the area to abnormal proportions by backing water over the great fringing marshes on the east and south. This land being, therefore, the natural flood ground of the lake,

should be reserved up to the high-water line. Accordingly, the segregation, as shown on Pl. XCV and given in the following lists, was made to include not only the bed but the lowlands up to mean high water.

Utah Lake Reservoir System.

T. 5 S., R. 1 W., Salt Lake meridian.

		Acres.
Section 23	All of the E. ½	320
Section 24	Entire section	640
Section 25	Entire section	640
Section 35	All of the E. ½	320
Section 36	Entire section	640

T. 6 S., R. 1 W.

Section	1	All of the NW. ¼	160
		All of the E. ½	320
			480
Section	12	All of the NE. ¼	160

T. 7 S., R. 1 W.

Section	13	All of the SE. ¼	160
Section	23	All of the SE. ¼	160
Section	24	Entire section	640
Section	25	Entire section	640
Section	26	Entire section	640
Section	34	All of the E. ½	320
Section	35	Entire section	640
Section	36	Entire section	640

T. 8 S., R. 1 W.

Section	1	Entire section	640
Section	2	Entire section	640
Section	3	Entire section	640
Section	4	All of the E. ½	320
Section	9	All of the E. ½	320
Section	10	Entire section	640
Section	11	Entire section	640
Section	12	Entire section	640
Section	13	Entire section	640
Section	14	Entire section	640
Section	15	Entire section	640

(MAP OMITTED)

			Acres.
Section	16	All of the E. ½	320
Section	22	All of the NW. ¼	160
		All of the E. ½	320
			480
Section	23	Entire section	640
Section	24	Entire section	640
Section	25	Entire section	640
Section	26	Entire section	640
Section	27	All of the E. ½	320
Section	34	All of the E. ½	320
Section	35	Entire section	640
Section	36	Entire section	640

T. 9 S., R. 1 W.

Section	1	Entire section	640
Section	2	Entire section	640
Section	3	All of the SE. ¼	160
Section	10	All of the E. ½	320
Section	11	Entire section	640
Section	12	Entire section	640
Section	13	Entire section	640
Section	14	Entire section	640
Section	15	Entire section	640
Section	22	All of the E. ½	320
Section	23	Entire section	640
Section	24	Entire section	640
Section	26	All of the N. ½	320
Section	27	All of the NE. ¼	160

T. 5 S., R. 1 E.

Section	19	All of the S. ½	320

Section 20	All of the S. ½	320
Section 21	All of the S. ½	320
Section 26	All of the SW. ¼	160
Section 27	Entire section	640
Section 28	Entire section	640
Section 29	Entire section	640
Section 30	Entire section	640
Section 31	Entire section	640
Section 32	Entire section	640
Section 33	Entire section	640
Section 34	Entire section	640
Section 35	Entire section	640
Section 36	Entire section	640

T. 6 S., R. 1 E.

		Acres.
Section 1	Entire section	640
Section 2	Entire section	640
Section 3	Entire section	640
Section 4	Entire section	640
Section 5	Entire section	640
Section 6	Entire section	640
Section 7	Entire section	640
Section 8	Entire section	640
Section 9	Entire section	640
Section 10	Entire section	640
Section 11	Entire section	640
Section 12	Entire section	640

Section 13	Entire section		640
Section 14	Entire section		640
Section 15	Entire section		640
Section 16	Entire section		640
Section 17	Entire section		640
Section 18	All of the NW. ¼	160	
	All of the E. ½	320	
			480
Section 19	All of the NE. ¼		160
Section 20	Entire section		640
Section 21	Entire section		640
Section 22	Entire section		640
Section 23	Entire section		640
Section 24	Entire section		640
Section 25	Entire section		640
Section 26	Entire section		640
Section 27	Entire section		640
Section 28	Entire section		640
Section 29	Entire section		640
Section 32	Entire section		640
Section 33	Entire section		640
Section 34	Entire section		640
Section 35	Entire section		640
Section 36	Entire section		640

T. 7 S., R. 1 E.

Section 1	Entire section	640
Section 2	Entire section	640
Section 3	Entire section	640
Section 4	Entire section	640
Section 5	Entire section	640
Section 6	All of the SE. ¼	160

		Acres.
Section 7	All of the E. ½	320
Section 8	Entire section	640
Section 9	Entire section	640
Section 10	Entire section	640
Section 11	Entire section	640
Section 12	Entire section	640
Section 13	Entire section	640
Section 14	Entire section	640
Section 15	Entire section	640
Section 16	Entire section	640
Section 17	Entire section	640
Section 18	Entire section	640
Section 19	Entire section	640
Section 20	Entire section	640
Section 21	Entire section	640
Section 22	Entire section	640
Section 23	Entire section	640
Section 24	Entire section	640
Section 25	Entire section	640
Section 26	Entire section	640
Section 27	Entire section	640
Section 28	Entire section	640
Section 29	Entire section	640
Section 30	Entire section	640
Section 31	Entire section	640
Section 32	Entire section	640
Section 33	Entire section	640
Section 34	Entire section	640
Section 35	Entire section	640

Section 36	Entire section	640

T. 8 S., R. 1 E.

Section 1	Entire section	640
Section 2	Entire section	640
Section 3	Entire section	640
Section 4	Entire section	640
Section 5	Entire section	640
Section 6	Entire section	640
Section 7	Entire section	640
Section 8	Entire section	640
Section 9	Entire section	640
Section 10	All of the N. ½	320
Section 11	Entire section	640
Section 12	Entire section	640
Section 13	Entire section	640
Section 14	Entire section	640

		Acres.
Section 16	All of the NW. ¼	160
Section 17	Entire section	640
Section 18	Entire section	640
Section 19	Entire section	640
Section 20	Entire section	640
Section 23	All of the N. ½	320
Section 24	All of the N. ½	320
Section 29	All of the W. ½	320
Section 30	Entire section	640
Section 31	Entire section	640

Section 32	All of the W. ½	320

T. 9 S., R. 1 E.

Section 5	All of the W. ½	320
Section 6	Entire section	640
Section 7	Entire section	640
Section 17	All of the W. ½	320
Section 18	Entire section	640
Section 19	Entire section	640
Section 20	Entire section	640

T. 5 S., R. 2 E.

Section 31	All of the S. ½	320

T. 6 S., R. 2 E.

Section 6	Entire section	640
Section 7	Entire section	640
Section 18	Entire section	640
Section 19	Entire section	640
Section 20	All of the S. ½	320
Section 28	All of the SW. ¼	160
Section 29	Entire section	640
Section 30	Entire section	640
Section 31	Entire section	640
Section 32	Entire section	640
Section 33	All of the NW. ¼	160
	All of the S. ½	320
		480

T. 7 S., R. 2 E.

Section 3	All of the W. ½	320
Section 4	Entire section	640
Section 5	Entire section	640
Section 6	Entire section	640
Section 7	Entire section	640

		Acres.
Section 8	Entire section	640
Section 9	Entire section	640
Section 10	All of the NW. ¼	160
	All of the S. ½	320
		480
Section 13	Entire section	640
Section 14	Entire section	640
Section 15	Entire section	640
Section 16	Entire section	640
Section 17	Entire section	640
Section 18	Entire section	640
Section 19	Entire section	640
Section 20	Entire section	640
Section 21	Entire section	640
Section 22	Entire section	640
Section 23	Entire section	640
Section 24	Entire section	640
Section 25	Entire section	640
Section 26	Entire section	640
Section 27	Entire section	640
Section 28	Entire section	640
Section 29	Entire section	640
Section 30	Entire section	640
Section 31	Entire section	640
Section 32	Entire section	640
Section 33	Entire section	640
Section 34	Entire section	640
Section 35	Entire section	640
Section 36	Entire section	640

T. 8 S., R. 2 E.

Section	4	All of the N. ½	320
Section	5	Entire section	640
Section	6	Entire section	640
Section	7	Entire section	640
Section	8	All of the W. ½	320

T. 7 S., R. 3 E.

Section	18	Entire section	640
Section	19	Entire section	640
Section	20	All of the W. ½	320
Section	30	All of the NE. ¼	160
		All of the W. ½	320
			480

Total area segregated, 125,440 acres.

PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Filed April 21, 1982

(Title Omitted In Printing)

Plaintiff moves the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment in accordance with the prayer of the Complaint and the position of Plaintiff set forth in the Pre-Trial Order. There is no material fact in controversy, and Plaintiff is entitled to judgment as a matter of law.

This Motion is based on the pleadings and discovery on file, on a Memorandum of Law filed in support hereof, and on affidavits of Mark H. Crystal, Douglas F. Day, Ross B. Elliott, Norman V. Hancock, Dee C. Hansen, Glen B. Hatch, Scott M. Matheson, Ralph A. Miles, Donald Gail Prince, Michael M. Quealy, and Calvin L. Rampton, and the documents identified therein or attached thereto.

Dated this 21st day of April, 1982.

DAVID L. WILKINSON
Utah Attorney General

/s/ Richard L. Dewsnup
RICHARD L. DEWSNUP
Assistant Attorney General

/s/ Dallin W. Jensen
DALLIN W. JENSEN
Assistant Attorney General

/s/ Michael M. Quealy
MICHAEL M. QUEALY
Assistant Attorney General

Attorneys for Plaintiff, State of Utah

(Certificate Of Service Omitted In Printing)

NOTICE OF APPEAL
Filed June 9, 1983

(Title Omitted In Printing)

Notice is hereby given that the State of Utah, by and through its Division of State Lands, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the order granting Defendants' Motion for Summary Judgment on the merits and denying Plaintiff's Motion for Summary Judgment entered in this action on the 15th day of April, 1983.

DATED this 9th day of June, 1983.

/s/ Dallin W. Jensen
DALLIN W. JENSEN
Assistant Attorney General
Attorney for Plaintiff State
of Utah, by and through its
Division of State Lands

/s/ Michael M. Quealy
MICHAEL M. QUEALY
Assistant Attorney General
Attorney for Plaintiff State
of Utah, by and through its
Division of State Lands

(Certificate Of Service Omitted In Printing)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NOVEMBER TERM - December 26, 1985

Before Honorable William J. Holloway, Jr., Honorable William E. Doyle, and Honorable James K. Logan, Circuit Judges.

THE STATE OF UTAH, by and through its
Division of State Lands,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA;
WILLIAM CLARK, Secretary of the Department of the Interior; ROBERT F. BURFORD, Director of the Bureau of Land Management within the Department of the Interior; and ROLAND G. ROBISON, JR., Utah State Director of the Bureau of Land Management;
Defendants-Appellees.

JUDGMENT

No. 83-1731

(D.C. No. C-79-0302J)

This cause came on to be heard on the record on appeal from the United States District Court for the District of Utah, and was argued by counsel.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed.

HOWARD K. PHILLIPS, Clerk
By /s/ Robert L. Hoecker
ROBERT L. HOECKER
Chief Deputy Clerk

A true copy

Teste

Howard K. Phillips
Clerk U.S. Court of
Appeals, Tenth Circuit

By /s/ Kathy Havens
Deputy Clerk

SUPREME COURT OF THE UNITED STATES

No. 85-1772

THE STATE OF UTAH, by and through its DIVISION OF STATE LANDS,

Petitioner,

v.

UNITED STATES OF AMERICA; DONALD P. HODEL, Secretary of the Interior; ROBERT F. BURFORD, Director of the Bureau of Land Management within the Department of the Interior; and ROLAND G. ROBISON, JR., Utah State Director of the Bureau of Land Management,

Respondents.

ORDER ALLOWING CERTIORARI.

Filed October 14, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.